

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 37

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

AN ACT

RELATING TO HEALTH RECORDS; CREATING THE ELECTRONIC MEDICAL RECORDS ACT; AUTHORIZING THE CREATION, MAINTENANCE AND USE OF ELECTRONIC MEDICAL RECORDS; CLARIFYING INDIVIDUAL RIGHTS WITH RESPECT TO THE DISCLOSURE OF INFORMATION CONTAINED IN ELECTRONIC MEDICAL RECORDS; CLARIFYING THE PROTECTION OF PRIVACY OF ELECTRONIC MEDICAL RECORDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Electronic Medical Records Act".

Section 2. PURPOSE.--The purpose of the Electronic Medical Records Act is to provide for the implementation, maintenance, use and protection of electronic medical records.

Section 3. DEFINITIONS.--As used in the Electronic Medical Records Act:

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1 A. "demographic information" means information in
2 an electronic medical record that identifies the individual who
3 is the subject of the medical record, including the
4 individual's name, date of birth, address and other information
5 that identifies the individual, that may be used to identify
6 the individual or that associates the individual with the
7 individual's electronic medical record;

8 B. "disclosure" means the release, transfer,
9 provision or otherwise divulging of an individual's electronic
10 medical records to a person other than the holder of the
11 records and includes having access to those records;

12 C. "electronic" means relating to technology having
13 electrical, digital, magnetic, wireless, optical,
14 electromagnetic or similar capabilities;

15 D. "electronic medical record" means a medical
16 record created, generated, sent, communicated, received or
17 stored by electronic means;

18 E. "electronic signature" means an electronic
19 sound, symbol or process attached to or logically associated
20 with a record and executed or adopted by an individual with the
21 intent to sign the record;

22 F. "health care" means care, services or supplies
23 related to the health of an individual and includes:

24 (1) preventive, diagnostic, therapeutic,
25 rehabilitative, maintenance or palliative care and counseling;

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1 (2) service, assessment or procedure with
2 respect to the physical or mental condition or functional
3 status of an individual or that affects the structure or
4 function of the body; and

5 (3) the sale or dispensing of a drug, a
6 device, a piece of equipment or other item in accordance with a
7 prescription;

8 G. "health care group purchaser" means a person,
9 other than a person licensed as a property and casualty or
10 workers' compensation insurer, licensed, certified or otherwise
11 authorized or permitted by the New Mexico Insurance Code to pay
12 for or purchase health care on behalf of an identified
13 individual or group of individuals, except for life insurers
14 and disability income insurers, regardless of whether the cost
15 of coverage or services is paid for by the purchaser or the
16 persons receiving coverage or services;

17 H. "health care information" means any information,
18 whether oral or recorded in any form or medium, related to the
19 past, present or future physical or mental health or condition
20 of an individual; the provision of health care to an
21 individual; or the past, present or future payment for the
22 provision of health care to an individual;

23 I. "health care institution" means an institution,
24 facility or agency licensed, certified or otherwise authorized
25 or permitted by law to provide health care in the ordinary

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1 course of business;

2 J. "health care provider" means an individual
3 licensed, certified or otherwise authorized or permitted by law
4 to provide health care in the ordinary course of business or
5 practice of a profession;

6 K. "health information exchange" means an
7 arrangement among persons providing for the disclosure of
8 electronic medical records;

9 L. "information" means data, including text,
10 images, sounds and codes and computer programs, software and
11 databases;

12 M. "medical record" means a record of health care
13 information;

14 N. "record" means information that is inscribed on
15 a tangible medium or that is stored in an electronic or other
16 medium and is retrievable in perceivable form;

17 O. "record locator service" means a system that
18 provides a means of identification of the existence and
19 location of the electronic medical records of a specified
20 individual; and

21 P. "treatment" means the provision, coordination or
22 management of health care and related services by one or more
23 health care providers, including the coordination or management
24 of health care by a health care provider with a third party;
25 consultation between health care providers relating to an

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1 individual; or the referral of an individual for health care
2 from one health care provider to another.

3 Section 4. IMPLEMENTATION PLAN FOR ELECTRONIC CLAIMS AND
4 BILLING.--

5 A. The New Mexico telehealth and health information
6 technology commission, no later than November 1, 2008, shall
7 develop an implementation plan for all health care providers
8 and health care institutions doing business in New Mexico to
9 migrate to the use of electronic claims and bills and for all
10 health care group purchasers doing business in New Mexico to
11 migrate to the use of electronic claims processing and
12 remittance. The plan shall be based on research, best
13 practices, the use of standard forms and processes, national
14 standards and a realistic assessment of the cost of the
15 migration to health care providers, health care institutions
16 and health care group purchasers and of their readiness to make
17 the migration to the use of electronic claims, bills and
18 remittances. The plan shall include:

19 (1) how electronic medical records used in the
20 claim and billing process shall be maintained in an electronic
21 database that is secure from misuse, malicious attacks and
22 mistakes through the use of applications, including intrusion
23 detection, access control, auditing, authentication and
24 encryption; and

25 (2) how an audit log shall be maintained

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1 during the claim and billing process of persons accessing and
2 information disclosed from an individual's electronic medical
3 record that is in the possession of a health care provider,
4 health care institution, health information exchange or health
5 care group purchaser that, at a minimum, includes the identity
6 of the person accessing or receiving disclosures from the
7 electronic medical record, a description of the information
8 accessed or disclosed and the date and time the information was
9 accessed or disclosed.

10 B. The implementation plan shall be presented to
11 the department of health by November 1, 2008. After evaluation
12 and consultation, the department, together with the New Mexico
13 telehealth and health information technology commission, shall
14 make recommendations to the governor and the legislature
15 regarding specific legislation or appropriations for
16 implementation of the plan prior to the first session of the
17 forty-ninth legislature.

18 Section 5. IMPLEMENTATION PLAN FOR ELECTRONIC MEDICAL
19 RECORDS.--

20 A. The New Mexico telehealth and health information
21 technology commission, no later than November 1, 2009, shall
22 develop an implementation plan for all health care providers
23 and health care institutions doing business in New Mexico and
24 for all health care group purchasers doing business in New
25 Mexico to migrate to the use of electronic medical records

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1 systems and the exchange of electronic health information. The
2 plan shall be based on research, best practices, the use of
3 standard definitions and protocols, national standards and a
4 realistic assessment of the cost of the migration to health
5 care providers, health care institutions and health care group
6 purchasers and of their readiness to make the migration to the
7 use of electronic medical records systems and the exchange of
8 electronic health information. The plan shall include:

9 (1) how electronic medical records shall be
10 maintained in an electronic database that is secure from
11 misuse, malicious attacks and mistakes through the use of
12 applications, including intrusion detection, access control,
13 auditing, authentication and encryption; and

14 (2) how an audit log shall be maintained of
15 persons accessing and information disclosed from an
16 individual's electronic medical record that is in the
17 possession of a health care provider, health care institution,
18 health information exchange or health care group purchaser
19 that, at a minimum, includes the identity of the person
20 accessing or receiving disclosures from the electronic medical
21 record, a description of the information accessed or disclosed
22 and the date and time the information was accessed or
23 disclosed.

24 B. The implementation plan shall be presented to
25 the department of health by November 1, 2009. After evaluation

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1 and consultation, the department, together with the New Mexico
2 telehealth and health information technology commission, shall
3 make recommendations to the governor and the legislature
4 regarding specific legislation or appropriations for
5 implementation of the plan.

6 Section 6. ELECTRONIC RECORDS--ELECTRONIC SIGNATURES--
7 LEGAL RECOGNITION.--If a law requires a medical record to be in
8 writing, or if a law requires a signature pertaining to a
9 medical record, an electronic medical record or an electronic
10 signature satisfies that law.

11 Section 7. RETENTION OF ELECTRONIC MEDICAL RECORDS.--

12 A. If a law requires that a medical record be
13 retained, the requirement is satisfied by retaining an
14 electronic record that:

15 (1) accurately reflects the medical record
16 after it was first generated and in its final form as an
17 electronic medical record or otherwise; and

18 (2) remains accessible and is capable of being
19 accurately reproduced for later reference.

20 B. A requirement to retain a medical record in
21 accordance with Subsection A of this section does not apply to
22 any information the sole purpose of which is to enable the
23 medical record to be sent, communicated or received.

24 C. If a law requires a medical record to be
25 presented or retained in its original form or provides

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1 consequences if the medical record is not presented or retained
2 in its original form, that law is satisfied by an electronic
3 medical record retained in accordance with Subsection A of this
4 section.

5 D. A medical record retained as an electronic
6 medical record in accordance with Subsection A of this section
7 satisfies a law requiring a person to retain a medical record
8 for evidentiary, audit or other purposes, unless a law enacted
9 after January 1, 2009 specifically prohibits the use of an
10 electronic medical record for the specified purpose.

11 Section 8. USE AND DISCLOSURE OF ELECTRONIC HEALTH CARE
12 INFORMATION.--

13 A. A health care provider, health care institution,
14 health information exchange or health care group purchaser
15 shall not use or disclose health care information in an
16 individual's electronic medical record to another person in
17 violation of state or federal law.

18 B. A health care provider, health care institution
19 or health care group purchaser may disclose demographic
20 information and information about the location of an
21 individual's electronic medical records to a record locator
22 service in accordance with law. A health care provider or
23 health care institution participating in a health information
24 exchange using a record locator service shall not have access
25 to demographic information, information about the location of

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1 the individual's electronic medical records or information in
2 an individual's electronic medical record except in connection
3 with the treatment of the individual.

4 C. A health information exchange maintaining a
5 record locator service shall maintain an audit log of health
6 care providers and health care institutions accessing
7 information in the record locator service that at least
8 contains information on:

9 (1) the identity of the health care provider
10 or health care institution accessing the information;

11 (2) the identity of the individual whose
12 information was accessed by the health care provider or health
13 care institution; and

14 (3) the date the information was accessed.

15 D. A health care group purchaser shall not require
16 a health care provider or health care institution to
17 participate in a record locator service as a condition of
18 payment or participation.

19 E. A person operating a record locator service or
20 health information exchange shall provide a mechanism under
21 which individuals may exclude their demographic information and
22 information about the location of their electronic medical
23 records from the record locator service. A person operating a
24 record locator service or a health information exchange that
25 receives an individual's request to exclude all of the

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1 individual's information from the record locator service or to
2 have a specific health care provider or health care institution
3 excluded from using the record locator service to access that
4 individual's information is responsible for removing that
5 information from the record locator service.

6 F. When requesting demographic information or
7 information in an individual's electronic medical record using
8 a record locator service or a health information exchange, the
9 requesting health care provider or health care institution
10 shall warrant that the request is for the treatment of the
11 individual and the person releasing the information may rely
12 upon the warranty of the person making the request that the
13 request is for the treatment of the individual.

14 Section 9. OUT-OF-STATE DISCLOSURES.--A disclosure
15 otherwise permissible under the Electronic Medical Records Act
16 may be made to health care providers, health care institutions
17 or record locator services located or operating outside the
18 state.

19 Section 10. HEALTH CARE REPRESENTATIVES.--A health care
20 provider, health care institution or health care group
21 purchaser is not subject to regulatory or disciplinary actions
22 or civil liability for:

23 A. complying with a request or authorization made
24 by a person apparently having authority to exercise the rights
25 and powers of an individual pursuant to the Electronic Medical

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1 Records Act; or

2 B. declining to comply with a request or
3 authorization made by a person based on a reasonable belief
4 that the person lacked authority to exercise the rights and
5 powers of an individual pursuant to the Electronic Medical
6 Records Act.

7 Section 11. EFFECTIVE DATE.--The effective date of the
8 provisions of Sections 6 through 10 of this act is January 1,
9 2009.

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